

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax. (This is a GIL).

December 14, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 18, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

AAA has a new customer who wishes to purchase a Software License Agreement. The customer is arguing the transaction is tax exempt in Illinois, but we believe otherwise and it is very difficult to digest the customer's argument without reference to any regulation from the IL Department of Revenue.

AAA respectfully requests a Private letter Ruling (PLR) pursuant to Illinois Administrative Code Section 1200.110 regarding the taxability of its Software License Agreement. We have enclosed for your review a copy of the Company's Software License Agreement. Could you please review the enclosed Software license Agreement, and let us know whether the transaction is taxable or not.

AAA. again requests that the DOR omit any reference to COMPANY, BUSINESS, or PERSON as part of a term or descriptive phrase from any publicly disseminated version of this PLR. It is further requested that any reference to addresses and/ or telephone numbers be deleted.

Your prompt response to this letter will be greatly appreciated. If you have any questions, please feel free to contact me.

We are unable to issue the Private Letter Ruling that you requested, because we did not receive the contracts we requested by phone on November 16, 2001. 86 Ill. Adm. Code 130.1935, Computer Software, has been recently amended. See enclosed revised copy of Section 130.1935. Generally, sales of "canned" computer software are taxable retail sales in Illinois. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c).

Custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

If transactions for the licensing of computer software meet all of the criteria provided in Section 130.1935(a)(1), neither the transfer of the software or the subsequent software updates will be subject to Retailers' Occupation Tax. A license of software is not a taxable retail sale if:

- A) It is evidenced by a written agreement signed by the licensor and the customer;
- B) It restricts the customer's duplication and use of the software;
- C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party) without the permission and continued control of the licensor;
- D) The licensor has a policy of providing another copy at minimal or no charge if the customer loses or damages the software, or permitting the licensee to make and keep an archival copy, and such policy is either stated in the license agreement, supported by the licensor's books and records, or supported by a notarized statement made under penalties of perjury by the licensor; and
- E) The customer must destroy or return all copies of the software to the licensor at the end of the license period. This provision is deemed to be met, in the case of a perpetual license, without being set forth in the license agreement.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.